

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
 )  
PORT AUTHORITY OF NEW YORK AND )  
NEW JERSEY )  
 )  
Request for Extension of Waiver of Sections )  
90.157 and 101.65(b) of the Commission's Rules )

**ORDER**

**Adopted: September 23, 2003**

**Released: September 24, 2003**

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* On August 13, 2003, the Port Authority of New York and New Jersey (Port Authority) filed a request for an extension<sup>1</sup> of a waiver of Sections 90.157<sup>2</sup> and 101.65(b)<sup>3</sup> of the Commission's Rules granted on September 10, 2002.<sup>4</sup> For the reasons set forth below, we grant the request.

2. *Background.* On August 9, 2002, the Port Authority filed a request for waiver<sup>5</sup> of Sections 90.157 and 101.65(b) of the Commission's Rules concerning certain stations destroyed in the World Trade Center attacks (collectively, the World Trade Center stations) on September 11, 2001.<sup>6</sup> On September 9, 2002, the Wireless Telecommunications Bureau, Public Safety and Private Wireless Division (Division) granted that waiver request for a period of one year until September 11, 2003 to return the World Trade Center Stations to operational status without the risk of forfeiting the licenses for permanent discontinuance of operation.<sup>7</sup> The Division stated, however, that its action did not preclude the Port Authority from requesting additional time should circumstances so warrant.<sup>8</sup>

<sup>1</sup> Port Authority of New York and New Jersey Request for Extension of Waiver (filed Aug. 13, 2003) (Extension Request).

<sup>2</sup> 47 C.F.R. § 90.157 ("A station license shall cancel automatically upon permanent discontinuance of operations. Unless stated otherwise in this part or in a station authorization, for the purposes of this section, any station which has not operated for one year or more is considered to have been permanently discontinued.")

<sup>3</sup> 47 C.F.R. § 101.65(b) ("Pursuant to § 1.955 of this chapter, if a station licensed under this part discontinues operation on a permanent basis, the licensee must cancel the license. For purposes of this section, any station which has not operated for one year or more is considered to have been permanently discontinued.")

<sup>4</sup> Port Authority of New York and New Jersey, *Order*, 17 FCC Rcd 16784 (WTB PSPWD 2002) (2002 Order).

<sup>5</sup> Port Authority of New York and New Jersey Request for Waiver (filed Aug. 9, 2002) (Waiver Request).

<sup>6</sup> See 2002 Order, 17 FCC Rcd at 16788-90, for a list of the affected stations.

<sup>7</sup> *Id.* at 16786-87 ¶ 6.

<sup>8</sup> *Id.* at 16787 n.27.

3. The Port Authority notes that the process for the restoration of facilities destroyed in the World Trade Center attacks is well underway.<sup>9</sup> It states that since the *2002 Order* was released it has worked to relocate the World Trade Center Stations to other sites, on either a temporary or permanent basis, and has planned to reconstruct these stations at the World Trade Center site when a suitable structure becomes available.<sup>10</sup> It states that two of the stations for which a waiver was granted have been returned to service at alternate locations and do not require an extension of the waiver,<sup>11</sup> but it has been unable to return the remaining facilities to operational status.<sup>12</sup>

4. Specifically, the stations for which an extension is requested fall into three categories. First, the Port Authority indicates that it would like to reinstate operations on Station WPKJ945 (radio facilities associated with the operation of Port Authority's PATH rail station at the World Trade Center site), but cannot at this time because of the reconstruction of a temporary PATH rail facility, which is scheduled to be completed in November 2003.<sup>13</sup> The Port Authority indicates that these radio facilities may not be able to recommence until the above grade-level building structures are "better defined."<sup>14</sup> The second category is the remaining World Trade Center stations licensed under Part 90, which were used for building security and other purposes.<sup>15</sup> The Port Authority indicates that, with one exception,<sup>16</sup> "the immediate restoration of these facilities has not been necessary,"<sup>17</sup> but the Port Authority plans to restore these local facilities "as promptly as reasonable during the World Trade Center site reconstruction process."<sup>18</sup> The third category is the World Trade Center stations licensed under Part 101 (microwave licenses) that were operated by the Port Authority as a transmission or reception point.<sup>19</sup> The Port Authority indicates that it has been unable to restore these sites due to the difficulties involved in finding a suitable alternative site location.<sup>20</sup> It states that it is currently using landline transmission facilities for

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<sup>9</sup> Extension Request at 3. Submitted with the Extension Request is a detailed description of the activities the Port Authority has undertaken to fully recover from World Trade Center attacks. *Id.* at Att. C.

<sup>10</sup> *Id.* at 3.

<sup>11</sup> The two stations that have been restored are Stations WNNM887 and KED650. The Port Authority reports that the site of Station WNNM887 has been relocated to the Chrysler Building in midtown Manhattan. The new site was first used on a temporary basis under a Special Temporary Authorization (Station WPUW980) and now operates pursuant to a modification of the license for Station WNNM887, which was granted on July 12, 2003. *Id.* at 3-4. The Port Authority reports that Station KED650 has also been relocated and authorized under Call Sign KC3949. *Id.* at 4. According to the Port Authority, Stations WNNM887 and KED650 are part of the backbone of the Port Authority's wide area 800 MHz system. *Id.* at 3.

<sup>12</sup> *Id.* at 1-2.

<sup>13</sup> *Id.* at 4.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* Stations KGU998, KGU999, KLY882, KVN779, KVN780, WPDS601, WPDU923, WPFN315, and WPKJ945. *Id.* at Att. B.

<sup>16</sup> The Port Authority indicates that the frequencies licensed under Station WPDS601 have been temporarily relicensed under Station WPWQ420 for public safety control and other coordination activities associated with the restoration of the World Trade Center site. *Id.* at 3 n.3. Although the Port Authority indicates that the frequencies under Station WPDS601 have been temporarily relicensed under Station WPWQ420, we note that Station WPWQ420 is a permanent license.

<sup>17</sup> *Id.* at 4.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 5. Stations WBM579, WNEE495, WNEE496, WNEE497, WNEK376, WNEK377, WPNI363, WPO92, and WPO93. *Id.* at Att. B.

<sup>20</sup> *Id.* at 5.

the traffic previously carried on the microwave links, but it intends to reconstruct these microwave facilities “[a]t such time as a suitable building site location becomes available at the World Trade Center.”<sup>21</sup> The Port Authority argues that the public interest requires that we maintain the licenses for all the World Trade Center stations in active status “until such time as the process for the reconstruction and resumption of the Port Authority’s communication operations can be completed.”<sup>22</sup>

5. *Discussion.* In the *2002 Order*, the Division concluded that the Port Authority had met the requirements for a waiver under Section 1.925(b)(3)(ii)<sup>23</sup> of the Commission’s Rules in that, in view of unique or unusual factual circumstances (the terrorist attacks on the World Trade Center), strict application of Sections 90.157 and 101.65(b) of the Commission’s Rules would be inequitable and contrary to the public interest.<sup>24</sup> The Port Authority argues that the same principles continue to apply, warranting an extension of the waiver for all of the World Trade Center licenses that still are not operational.

6. We agree. In the *2002 Order*, we stated that although the Port Authority requested a waiver of Sections 90.157 and 101.65(b) of the Commission’s Rules “until such time as the process for reconstruction and resumption of the Port Authority’s communication operations can be completed,”<sup>25</sup> we believed that “a fixed waiver term is appropriate to avoid any ambiguity concerning the status of the licenses and to allow relicensing of any spectrum that the Port Authority may later decide is not necessary for its future operations.”<sup>26</sup> Thus, the Port Authority was granted a waiver of Sections 90.157 and 101.65(b) of the Commission’s Rules until September 11, 2003 to reconstruct the World Trade Center stations.<sup>27</sup> The *2002 Order* attempted to balance between the Port Authority’s need for additional time to bring necessary facilities back into operation and the need of other public safety entities for spectrum that otherwise would go unutilized if the Port Authority were granted an open-ended waiver.

7. Based on the information before us, we believe that the Port Authority has been diligent in its efforts to restore its use of the subject authorized facilities. In this connection, we note that the Port Authority’s efforts are impacted by other entities involved in and/or responsible for planning and implementing reconstruction of structures at the site of the former World Trade Center.<sup>28</sup> Given that the Port Authority had constructed its radio facilities prior to the tragic events of September 11, 2001, we believe that it is likely that Port Authority would continue to need the subject frequencies for public safety communications. Thus, we are not inclined to make them available to other entities given the progress made by Port Authority thus far in restoration of its radio communications facilities.

8. *Conclusion.* We grant an additional one-year extension of the waiver granted in the *2002 Order*, until September 11, 2004, for the Port Authority to reconstruct its remaining Part 90 and microwave stations.<sup>29</sup>

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 7.

<sup>23</sup> 47 C.F.R. § 1.925(b)(3)(ii).

<sup>24</sup> *2002 Order*, 17 FCC Rcd at 16786 ¶ 5.

<sup>25</sup> Waiver Request at 5.

<sup>26</sup> *2002 Order*, 17 FCC Rcd 16784, 16786 ¶ 6.

<sup>27</sup> *Id.*

<sup>28</sup> Extension Request at 4.

<sup>29</sup> See Appendix, *infra*.

9. Accordingly, IT IS ORDERED that pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), Sections 1.925, 90.157, and 101.65(b) of the Commission's Rules, 47 C.F.R. §§ 1.925, 90.157, and 101.65(b), the Request for Extension of Waiver filed on August 13, 2003 by the Port Authority of New York and New Jersey IS GRANTED to the extent indicated herein.

10. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry  
Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau

## Appendix

**Table 1: Tabulation of Affected Radio Stations Authorized Under FCC Part 90**

<b>Radio Authorization Call Sign</b>	<b>Expiration Date</b>	<b>Radio Service Code</b>	<b>Affected Location Number</b>	<b>Geographic Coordinates N.Lat/W.Long (NAD83)</b>	<b>Frequency (MHz)</b>
KGU999	1/14/2012	PW	1	40-42-43.4 074-00-47.5	150.99500
KGU998	1/14/2012	PW	1	40-42-43.4 074-00-47.5	151.11500
KLY882	3/13/2005	PW	1	40-42-41.4 074-00-43.5	453.37500
KLY882	3/13/2005	PW	2	N/A	453.37500
KVN780	10/23/2004	PW	2	40-42-39.4 074-00-43.5	470.56250 470.58750
KVN779	10/23/2004	PW	1	40-42-39.4 074-00-43.5	470.61250
WPDS601	12/1/2003	YF	1	40-42-41.4 074-00-43.5	866.07500, 866.38750, 868.10000
WPKJ945	3/18/2012	LN	1	40-42-43.4 074-00-47.5	910.75000, 912.75000, 915.75000, 917.75000, 919.75000, 920.75000
WPDU923	11/18/2013	PW	1	40-42-41.4 074-00-43.5	453.65000
WPFN315	6/19/2005	GF	1	40-42-41.4 074-00-43.5	866.51250, 868.01250

**Table 2: Tabulation of Affected Radio Stations Authorized Under FCC Part 101**

<b>Radio Authorization Call Sign</b>	<b>Expiration Date</b>	<b>Radio Service Code</b>	<b>Affected Location Number Trsmtr</b>	<b>Geographic Coordinates N.Lat/W.Long (NAD83) Trs</b>	<b>Affected Location Number Receiver</b>	<b>Affected Path Number/ Segment</b>	<b>Frequency (MHz)</b>
WNEE495	2/11/2009	MW	1	40-42-40.3 074-00-47.5	**	4s1	11215.00000
WNEE495	2/11/2009	MW	1	40-42-40.3 074-00-47.5	**	5s1	11685.00000
WNEE495	2/11/2009	MW	1	40-42-40.3 074-00-47.5	**	6s1	11525.00000
WNEE495	2/11/2009	MW	1	40-42-40.3 074-00-47.5	**	7s1	10578.12500
WPO93	12/6/2010	MW	1	40-42-43.3 074-00-46.5	**	1s1	12470.00000
WNEK376	1/7/2008	MW	1	40-42-43.3 074-00-47.5	**	1s1	23075.00000
WNEK377	1/7/2008	MW	1	40-43-52.3 074-02-37.5	2	1s1	21875.00000
WNEE496	1/6/2008	MW	1	40-46-21.3 073-53-10.4	2	2s1	10835.00000
WNEE497	1/6/2008	MW	1	40-42-14.3 074-09-15.5	2	2s1	10875.00000
WPO92	6/4/2012	MG	1	40-43-53.3 074-03-51.5	2	1s1	12210.00000
WBM579	2/11/2009	MW	1	40-51-00.3 073-56-45.4	3	3s1	10643.12500
WPNI363	1/6/2009	MW	1	40-39-05.3 073-48-34.4	2	1s1	10715.00000